Supreme Court, U.S.
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No. 86-321 (2)

In The
SUPREME COURT OF THE UNITED STATES

October Term, 1986

DEAN WITTER REYNOLDS INC. and BRENTON OGDEN,

Petitioners,

vs.

HARRY R. CONOVER,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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8 pp

QUESTION PRESENTED

The controlling decisions of this Court and circuit courts have confirmed the parity between the implied remedy under Section 10(b) of the Securities Exchange Act of 1934 and the overlapping express remedies under the Securities Act of 1933 and stressed the need for a judicial forum for federal securities claims. Consequently, the question presented is whether, in light of the controlling case law, the language and history of the federal securities statutes manifest the nonarbitrability of Section 10(b) claims notwithstanding a predispute agreement to arbitrate such claims.

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The issue presented by this petition is virtually identical to one of the primary issues presented by the petition filed

in *McMahon v. Shearson/American Express, Inc.*[1] *("McMahon").* Because this Court has granted the petition for certiorari in *McMahon*[2] and because of the undeniable split among the circuits on the issue presented by this petition,[3] respondent has no reasonable basis for opposing certiorari. In fact, inasmuch as this Court's decision in *McMahon* could control the ultimate disposition of the issue presented by this petition, it is important that respondent be permitted to fully present his views before this Court.

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1 788 F.2d 94 (2nd Cir. 1986), Petition for Cert. filed, 55 U.S.L.W. 3032 (U.S. July 4, 1986), Petition for Cert. granted, 55 U.S.L.W. 3231 (U.S. October 6, 1986).

2 55 U.S.L.W. 3231 (U.S. October 6, 1986).

3 Since Petitioners filed this petition, the Eleventh Circuit, on rehearing *en banc*, and the Fifth Circuit, in a memorandum opinion, have affirmed the nonarbitrability of claims under Section 10(b) of the Securities Exchange Act of 1934 despite a predispute agreement to arbitrate such claims. *Wolfe v. E. F. Hutton & Co., Inc.*, 800 F.2d 1032 (11th Cir. 1986); *King v. Drexel Burnham Labert, Inc.*, 796 F.2d 59 (5th Cir. 1986), petition for cert. filed, 55 U.S.L.W. 3153 (U.S. August 25, 1986).

CONCLUSION

This Court has already recognized the importance of the issue presented by this petition and agreed to decide that issue in the context of another case. For these reasons, respondent cannot oppose certiorari and must respectfully request that certiorari be granted.

Dated: November 14, 1986

Respectfully submitted,

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